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108TH CONGRESS
1ST SESSION

H. R. 2849

To amend the Immigration and Nationality Act with respect to the H–1B and L–1 visa programs to prevent unintended United States job losses, to increase the monitoring and enforcement authority of the Secretary of Labor over such programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 24, 2003

Mrs. JOHNSON of Connecticut (for herself, Mr. SIMMONS, Mr. MICA, Mr. GREENWOOD, and Mr. MANZULLO) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend the Immigration and Nationality Act with respect to the H–1B and L–1 visa programs to prevent unintended United States job losses, to increase the monitoring and enforcement authority of the Secretary of Labor over such programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''USA Jobs Protection Act of 2003''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) The H–1B and L–1 visa programs were established to enable United States employers to hire workers with the necessary skills and allow the intracompany transfer of certain workers in the employ of companies with operations outside of the United States.

(2) Employers have used the H–1B and L–1 visa programs to fill hundreds of thousands of positions in United States firms.

(3) According to a General Accounting Office report, 60 percent of the positions being filled by workers provided under the H–1B visa program are related to information technology.

(4) The median annual salaries for information technology employment was $45,000 in 1999.

(5) In 2001, Congress specifically banned the displacement of United States employees by H–1B visa holders and mandated that employers pay H–1B workers prevailing United States wages.

(6) United States unemployment in information technology specialties has increased over the last 2 years making it more difficult for employers to certify that they are unable to find American information technology employees to fill vacancies as required to gain approval of H–1B visa applications.

(7) United States consular officers in foreign countries in the past have expressed concerns that the L–1 visa program was being exploited beyond the original purpose of the program by allowing employers to bring in workers who subsequently are employed by other companies.

(8) It has been reported that the former Immigration and Naturalization Service was reviewing the L–1 visa program to assess whether companies were using the L–1 visa to circumvent restrictions associated with the H–1B visa program.

(9) The Department of Labor has had very limited authority to enforce the program requirements of the H–1B visa program and no legal authority to police the L–1 visa program.

(10) Historical weaknesses in the administration of the H–1B program by the former Immigration and Naturalization Service caused unnecessary delays in processing employer requests and also made the H–1B program vulnerable to abuse.

(b) PURPOSE.—The purpose of this Act is to ensure that the H–1B and L–1 visa programs are utilized for the purposes for which they were intended and not to displace American workers with lower cost foreign visa hold-

ers, by closing the loopholes in the programs and strengthening enforcement and penalties for violations of laws.

SEC. 3. L–1 NONIMMIGRANT VISAS.

(a) WAGE REQUIREMENTS; LIMITATION ON PLACEMENT OF INTRACOMPANY TRANSFEREES; DISPLACEMENT OF WORKERS.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

''(F) No alien may be admitted or provided status as a nonimmigrant described in section 101(a)(15)(L) unless the importing employer has filed with the Secretary of Labor an application stating the following:

''(i) The employer will not place the nonimmigrant with another employer where—

''(I) the nonimmigrant performs duties in whole or in part at 1 or more worksites owned, operated, or controlled by such other employer; and

''(II) there are indicia of an employment relationship between the nonimmigrant and such other employer.

''(ii) The employer shall make available for public examination, not later than 1 working day after the date on which an application under this subparagraph is filed, at the employer's principal place of

business or worksite, a copy of each such application (and such accompanying documents as are necessary). The Secretary shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under this subparagraph. The Secretary shall make such list available for public examination in Washington, D.C. The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary of Labor finds that an application is incomplete or obviously inaccurate, the Secretary of Labor shall certify to the Secretary of Homeland Security, not later than 7 days after the date of the filing of the application, that the requirements of this subclause have been satisfied. The application form shall include a clear statement explaining the liability under this clause if an employer places a nonimmigrant with another employer in violation of clause (i).

''(iii) The employer is offering and will offer during the period of authorized employment to aliens admitted or provided status as a nonimmigrant described in section 101(a)(15)(L) wages that are at least—

''(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

''(II) the prevailing wage level for the occupational classification in the area of employment;

whichever is greater, based on the information available at the time of filing the application.

''(iv) The employer did not displace and will not displace a United States worker employed by the employer within the period beginning 180 days before and ending 180 days after the date of filing of any visa petition supported by the application.

''(v) The provisions of section 212(n)(2) shall apply to a failure to meet a condition of clauses (i), (iii), and (iv) and subparagraph (G) in the same manner as such provisions apply to a failure to meet a condition of section 212(n)(1)(F).''.

(b) APPROPRIATE AGENCIES REFERENCES.—Section 214(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(1)) is amended by inserting after ''Department of Agriculture.'' the following: ''For purposes of this subsection with respect to nonimmigrants described in sec-

tion 101(a)(15)(L), the term 'appropriate agencies of Government' means the Department of Labor.''.

(c) RESTRICTION OF BLANKET PETITIONS.—Section 214(c)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)(A)) is amended by striking ''In the case of'' and all that follows through the period and inserting the following: ''Not later than January 15 of each year, the Secretary of Homeland Security shall consult with the Secretary of Labor to ensure that procedures utilized in that calendar year to process blanket petitions shall not undermine efforts by the Department of Labor to enforce the provisions of this subsection and shall consider any recommendations that the Secretary of Labor proposes to such procedures to enhance compliance with the provisions of this subsection.''.

(d) ACTION ON PETITIONS.—Section 214(c)(2)(C) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)(C)) is amended by inserting before the period the following: '', unless the Secretary of Homeland Security, after consultation with the Secretary of Labor, determines that an additional period of time beyond 30 days is necessary to ensure the proper implementation of this subsection''.

(e) EMPLOYMENT HISTORY.—Section 101(a)(15)(L) of the Immigration and Nationality Act (8 U.S.C.

1101(a)(15)(L)) is amended by striking ''one year'' and inserting ''2 of the last 3 years''.

(f) PERIOD OF ADMISSION.—Section 214(c)(2)(D) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)(D)) is amended—

(1) in clause (i), by striking ''7 years'' and inserting ''5 years''; and

(2) in clause (ii), by striking ''5 years'' and inserting ''3 years''.

(g) RECRUITMENT; ADMINISTRATIVE FEE; DEFINITIONS.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by subsection (a), is further amended by adding at the end the following:

''(G) In the case of a petition to import aliens as nonimmigrants in a capacity that involves specialized knowledge as described in section 101(a)(15)(L), the employer, prior to filing the petition, shall file with the Secretary of Labor an application stating that the employer has taken good faith steps to recruit, in the United States using procedures that meet industry-wide standards, United States workers for the job for which the nonimmigrants are sought.

''(H) The Secretary of Labor shall impose a fee on an employer filing a petition to import aliens as non-

immigrants described in section 101(a)(15)(L) to cover the administrative costs of processing the petition.

''(I) The Secretary of Labor may initiate an investigation of any employer that employs nonimmigrants described in section 101(a)(15)(L) if the Secretary of Labor has reasonable cause to believe that the employer is not in compliance with this subsection. The investigation may be initiated not solely for completeness and obvious inaccuracies by the employer in complying with this subsection.

''(J) In this paragraph:

''(i) In the case of an application with respect to 1 or more nonimmigrants described in section 101(a)(15)(L) by an employer, the employer is considered to 'displace' a United States worker from a job if the employer lays off the worker from a job that is essentially the equivalent of the job for which the nonimmigrant is sought. A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job.

''(ii)(I) The term 'lays off', with respect to a worker—

''(aa) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract; but

''(bb) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

''(II) Nothing in this clause is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

''(iii) The term 'United States worker' means an employee who—

''(I) is a citizen or national of the United States; or

''(II) is an alien who is lawfully admitted for permanent residence or is an immigrant

otherwise authorized by this Act or by the Secretary of Homeland Security to be employed.''.

(h) TECHNICAL AND CONFORMING AMENDMENT.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by striking ''Attorney General'' each place that term appears and inserting ''Secretary of Homeland Security''.

SEC. 4. TEMPORARY NONIMMIGRANT WORKERS.

(a) H–1B DEPENDENT EMPLOYERS.—

(1) IN GENERAL.—Section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) is amended—

(A) in paragraph (1)—

(i) in subparagraph (E)(ii), by striking ''an H–1B-dependent employer (as defined in paragraph (3))'' and inserting ''an employer that employs H–1B nonimmigrants''; and

(ii) in subparagraph (F), by striking ''(regardless of whether or not such other employer is an H–1B-dependent employer)''; and

(B) in paragraph (2)—

(i) in subparagraph (E), by striking ''If an H–1B-dependent employer'' and in-

serting ''If an employer that employs H–1B nonimmigrants''; and

(ii) in subparagraph (F), by striking ''The preceding sentence shall apply to an employer regardless of whether or not the employer is an H–1B-dependent employer.''.

(2) CONFORMING DEFINITION AMENDMENT.—Section 212(n)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(3)) is amended—

(A) by striking subparagraph (A); and

(B) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(b) DISPLACEMENT OF WORKERS.—Section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) is amended—

(1) in paragraph (1)(F), by striking ''90 days'' each place that term appears and inserting ''180 days''; and

(2) in paragraph (2)(C)(iii), by striking ''90 days'' each place that term appears and inserting ''180 days''.

(c) ENFORCEMENT ACTION.—Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C.

1182(n)(2)) is amended by adding at the end the following:

''(I) The Secretary of Labor may initiate an investigation of any employer that hires nonimmigrants described in section 101(a)(15)(H)(i)(b) if the Secretary of Labor has reasonable cause to believe that the employer is not in compliance with this subsection. The investigation may be initiated not solely for completeness and obvious inaccuracies by the employer in complying with this subsection.''.

(d) ADMINISTRATIVE FEE.—Section 214(c)(9)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(9)(A)) is amended by striking ''before October 1, 2003''.

SEC. 5. COMPTROLLER GENERAL INVESTIGATION.

Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall undertake an investigation to determine—

(1) how the amendments made by this Act are being implemented;

(2) the impact that the amendments made by this Act have had on employers and workers in the United States; and

(3) whether additional changes to existing law are necessary—

(A) to prevent American workers from being displaced by nonimmigrants described in subparagraphs (L) and (H)(i)(b) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)); or

(B) to meet the legitimate needs of United States employers.

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